

From: Robert Cheetham
To: Microsoft ATR
Date: 12/28/01 2:23pm
Subject: Microsoft Settlement

Dear DOJ Antitrust Division,

I am writing to submit comments during the Tunney Act public comment period regarding the Department of Justice's settlement proposal of the antitrust case with Microsoft Corporation.

My company is a Microsoft customer. We are software developers that rely on the Microsoft platforms and developer tools to make our business work and to help our clients do the same. However, over the past seven years we have repeatedly witnessed the bullying of competitors, stifling of innovation, obfuscation of security flaws in the software, increased prices for operating systems and office automation software and a dramatic decline in the choices we have available to us as consumers of computer software. Observing these events, we believe the case brought against Microsoft over the past several years was fully justified. Moreover, the behavior of Microsoft's representatives during the trial was appallingly dishonest and disingenuous at best. In light of this, we submit the following points:

- * While we do not support the originally proposed breakup of the company, we agree with the Court of Appeals that Microsoft is a monopoly and that it has illegally abused that monopoly.

- * The OEM terms requirements in the settlement are positive moves and will be helpful.

- * The settlement requires licensing of operating system APIs, but it allows so many exclusions for security, anti-piracy, authentication, etc., that there will be an enormous amount of the operating system that will remain closed. Moreover, whether an API is subject to exclusion or not will be subject to interpretation, turning compliance into an argument over terms.

- * The means by which the compliance will be monitored includes a 3 person technical committee, with one member chosen by the plaintiff, one by Microsoft and the third agreed upon by the first two. We do not believe that Microsoft should have a voice in forming the committee that will monitor its own behavior.

- * While the OEM terms are positive, we do not believe that the settlement arrived at by the DOJ and the States is going to be an effective remedy to Microsoft's past behavior. It is therefore not in the public interest. We encourage the Court and the plaintiffs to reject the proposed settlement and consider other more effective remedies including requiring Microsoft to release into the public domain or to open source both the APIs and source code for its Office, Windows operating system, and Internet Explorer browser. These are the products with which Microsoft both has a monopoly and has abused that monopoly. If the source code for these products were available to the public for re-use, we believe the result will be a more competitive market, more secure operating systems, and greater innovation. This still leaves an enormous range of competitive products (such as Visual Studio, SQL Server, MapPoint, etc.) upon which Microsoft can innovate and make money. Moreover, with Windows, Office and IE as either open source software or in the public domain, a common platform for future software development will be maintained for the benefit of the consumer. Such a remedy would cause short-term damage to Microsoft's revenues, but in the long run, the result will be a healthier Microsoft, a more robust software industry and a more secure information infrastructure.

Despite the events of September 11, we are confident that the American economy is fundamentally healthy. The settlement that was agreed upon in October and November 2001 is, quite frankly, toothless and nothing more than a slap on the wrist for Microsoft. It rewards the company for its past illegal

behavior and will do more to stifle the American economy than it will to encourage it. Microsoft's monopolistic behavior has stifled far more innovation than it has encouraged, and the US economy is increasingly based upon such innovation. Microsoft's monopoly abuse should be prevented in the future, and we encourage the Department of Justice and the State Attorneys General to consider remedies that will do so. We believe the current proposed settlement does not.

We want to see Microsoft be a successful company, but we also want to see that happen on a level playing field in which smaller companies, like ours, have a chance to both compete fairly and to purchase innovative, competitively-priced software products. Please consider withdrawal of the proposed settlement and negotiation of a settlement that is in the public interest.

Sincerely,

Robert M Cheetham
President
Avencia, Incorporated
Philadelphia, PA

CC: attorney.general@po.state.ct.us@inetgw